

TESTIMONY OF
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AND
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COUNTERFEITING AND PIRACY
ON
H.R. 4279,
THE PRIORITIZING RESOURCES AND ORGANIZATION
FOR INTELLECTUAL PROPERTY ACT OF 2007
BEFORE THE
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INTELLECTUAL PROPERTY
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I. Introduction and Summary

Chairman Berman, Ranking Member Coble, and distinguished members of the Subcommittee - I thank you for inviting me here today to testify on H.R. 4279, the "Prioritizing Resources and Organization for Intellectual Property Act of 2007" (the "Act").

I appear here today primarily on behalf of the Coalition Against Counterfeiting and Piracy, or CACP, which I serve as Chairperson. The CACP is a cross-sector coalition of over 500 companies and associations, who have all come together to fight the vital economic battle against counterfeiting and piracy. (CACP's membership list is attached as Exhibit A.) I of course also represent NBC Universal, which I serve as Executive Vice President and General Counsel.

At the outset, let me emphasize four points:

First, intellectual property (IP) theft is a jobs and economic security issue, with hundreds of billions of dollars a year and millions of high-paying jobs at stake, making it a vital matter for business, for labor, and for government. Studies have shown that IP-dependent sectors drive 40% of the growth of the U.S. economy and 60% of the growth of our exportable goods and services.

Second, IP theft is a health and safety issue that presents a clear and increasing danger to the public, from counterfeit toothpaste laced with antifreeze to exploding batteries and other dangerous consumer goods. Indeed, even test strips for diabetes are being counterfeited and sold as legitimate, with obvious life-threatening results. Sectors where IP theft threatens health and safety include automobile parts, airplane parts, food, medical devices, medical supplies, electrical supplies, pharmaceuticals and many more.

Third, IP theft is the new face of organized crime. Organized crime goes where the money is, and today that means piracy and counterfeiting, where criminals can engage, with minimal risk, in high-value commerce such as manufacturing millions of bootleg DVDs or bottles of counterfeit medicine.

And fourth, IP theft is a global pandemic that is getting worse, not better, across a broad range of key sectors of the U.S. economy. Over the past 20 years, advances in technology, manufacturing capabilities and transportation have allowed organized crime gangs, counterfeiters and pirates to escalate the scale and scope of their operations many fold. Our efforts to counter this pandemic have simply not kept pace.

Despite the daunting scope of the challenges, there is hope, and a clear path forward. Within the last few months, other advanced nations including France and the United Kingdom have announced bold programs to protect their intellectual property industries. And if we are to turn the tide in this country, we too must significantly step up our efforts on many fronts to protect intellectual property - efforts in the private sector, in technology development, and, at the forefront of our discussion today, in government action.

The Act is a critical step in the right direction, and we commend the members and their staff who have toiled so hard to pull this important and comprehensive bill together. The Act recognizes three fundamental steps that our government must undertake in order to make a difference:

Number one, the Act creates key leadership positions to address the challenge of counterfeiting and piracy - government-wide, with the new United States Intellectual Property Enforcement Representative, and within the Department of Justice, with a new Intellectual Property Enforcement Division, headed by the Intellectual Property Enforcement Officer;

Number two, it authorizes more IP-devoted resources, including FBI agents and federal prosecutors dedicated to IP investigations, money for state IP enforcement programs, and international specialists dispatched around the world; and,

Number three, it updates several laws that have failed to keep pace with the burgeoning threat of counterfeiting and piracy.

Support for the sensible measures contained within the Act comes not only from business associations including the U.S. Chamber of Commerce, the National Association of Manufacturers and the other 500 plus trade associations and companies who are members of the CACP, but also from organized labor, as the testimony of my fellow witness, James Hoffa, President of the International Brotherhood of Teamsters, makes clear. Unions understand all too well that counterfeiting and piracy results in exporting good U.S. jobs and importing dangerous products that hurt American workers and their families, such as counterfeit brake pads, and fake medicines that harm and do not heal.¹

Congress should adopt this Act, and other complementary proposals that are within the jurisdictions of other Committees of Congress, in order to make a long-term difference to the health of our economy, which is ultimately vital to our national security.

¹ All of the following unions have sent letters to Chairman Conyers urging the passage of comprehensive IP enforcement legislation to counteract the effects of rampant counterfeiting and copyright:

American Federation of Musicians (AFM)
American Federation of Television and Radio Artists (AFTRA)
Screen Actors Guild (SAG)
Directors Guild of America (DGA)
International Brotherhood of Electrical Workers (IBEW)
International Alliance of Theatrical Stage Employees (IATSE)
Communications Workers of America (NABET/CWA)
International Brotherhood of Teamsters (IBT)
UNITE HERE
Laborers International Union of North America (LIUNA)
Change to Win coalition (including the Teamsters, SEIU, UFCW, UNITE HERE, UBC, LIUNA, and others)
Office and Professional Employees (OPEIU)

This is not just my opinion; it is also the conclusion of a powerful new report entitled the “Economic Analysis of the Proposed CACP Anti-Counterfeiting and Piracy Initiative” (the “Tyson Report”), released today by Professor Laura Tyson, formerly President Clinton’s National Economic Advisor, assisted by the respected economics firm, LECG. That study evaluates the costs and benefits of the type of prudent investment in enhanced IP protection that is embodied in this legislation. It concludes that:

- For every dollar invested, federal tax revenues would increase by at least \$2.90 and by as much as \$9.70, with an intermediate range of \$4.9 to \$5.7;
- Each dollar would increase U.S. economic output by at least \$38 and by as much as \$127, with an intermediate range of \$64 to \$75;
- The increase in output would result in the creation of between 174,000 and 348,000 new jobs during the third year of the program; and,
- State and local governments can expect to receive incremental revenues between \$1.25 billion and \$1.50 billion, in present value terms over three years.²

The Tyson Report confirms what we all know: We *must* tackle the problem of IP theft to safeguard our economic security, to create jobs, to protect our health and safety, to defend against organized crime, and to make the United States a model for our trading partners of how to address this issue. This legislation is a vital part of the strategy.

I. The Scope of the Problem

When I took the helm of the CACP in January of 2007, I already knew that piracy had a huge impact on the movie and television industry, causing revenue losses of over \$18 billion to movie companies around the world, and over \$6 billion just to the six major U.S. studios. I knew piracy had devastated the music industry, and, as studies had indicated, was significantly damaging the software and videogames sectors too.

We also know, from studies of the type I will discuss shortly, that revenue loss to business did not capture the full impact on the U.S. economy. Due to the impact upstream and downstream of affected businesses, the \$6 billion revenue loss to U.S. movie companies translates to \$20 billion of lost output to the U.S. economy.³

² The Executive Summary of the report is attached as Exhibit B to this testimony; the entire report can be found at the website of the CACP: www.thecacp.com.

³ See, “The True Cost of Motion Picture Piracy to the U.S. Economy” by Stephen E. Siwek, available at www.ipi.org or <http://www.copyrightalliance.org/files/u227/CostOfPiracy.pdf>.

The CACP members rapidly educated me about how counterfeiting affects other sectors of the economy, such as pharmaceuticals, auto parts, aircraft parts, consumer goods, footwear, fashion apparel, luxury goods, toys, electronics, food products, medical devices and health products, and machine tools.

I asked the experts all over the world, people who are working these issues everyday, whether, from their perspective, the problem was getting worse or getting better.

What they told me -- to a person -- was that the situation was bad and getting worse. Almost anything they manufacture can be -- and is being -- copied by others, who slap a fake trademark on an inferior, often unsafe good and pass it off as legitimate. From China to Brazil to right here at home, we are losing ground to the counterfeiters and pirates, and losing ground fast.

It is difficult to pick up a newspaper or go online these days without seeing headlines about counterfeit toys, dog food, razors, pharmaceuticals, even aircraft parts. Counterfeiting and piracy are no longer just a chronic problem: they are an acute and growing crisis.

Recent econometric studies document the importance of the IP-dependent industries to the US economy, and quantify the pernicious and pervasive effects of piracy and counterfeiting. Those studies put the anecdotal evidence into a context that underscores the critical need for dramatic action by this Congress and by the Executive Branch Departments and agencies that enforce IP laws.

A. Contributions of the IP Industries

It hardly needs stating that IP industries in the United States contribute greatly to the American economy and are worth protecting. But it is crucial to put some hard numbers around this obvious fact. Therefore, two years ago, we at NBC Universal commissioned a study designed to answer an important question: how dependent is the U.S. economy on those industry sectors that are driven by innovation, invention, and creativity? The study aggregated industries that rely heavily on copyright or patent protection and measured their revenue, employment, compensation to workers, and contribution to growth.

The study⁴ found that these industries are huge contributors to U.S. GDP. They are responsible for 40% of the growth achieved by all U.S. private industry, and contribute nearly 60% of the growth of exportable products and services. And these industries pay wages that are 40% more than the average wage in the U.S.

⁴ *Engines of Growth: Economic Contributions of the U.S. Intellectual Property Industries*, by Stephen E. Siwek, http://www.nbcuni.com/About_NBC_Universal/Intellectual_Property/pdf/Engines_of_Growth.pdf

These findings make plain the impact of IP on the ability of the U.S. to compete in the global economy. IP industries drive growth in today's world and hold the keys to our nation's future economic well-being. They are responsible for more jobs and better jobs than ever before.

Even measuring the contributions of just one segment of the IP industries -- the copyright sector -- reveals its critical importance. According to a recent study released by the International Intellectual Property Alliance, U.S. "total" copyright industries accounted for an estimated \$1.38 trillion, or 11.12 % of GDP, and employed 11.3 million workers.⁵

B. Impact of Piracy and Counterfeiting

Given the vast contributions of these crucial industries to the present and future U.S. economy, how badly are they -- and our economy as a whole -- hurt by piracy and counterfeiting?

In 2002, the FBI estimated that U.S. companies lose between \$200 and \$250 billion *per year* to piracy and counterfeiting.⁶ Given that, by all accounts, piracy and counterfeiting have been growing by leaps and bounds, that half-decade old figure must be seen as conservative.

But another recent study -- announced just last month -- provides an insight into just how devastating the damage from piracy and counterfeiting really is to the U.S. economy. It shows that we may have been guilty in the past of understating this damage.

The study is called "The True Cost of Copyright Industry Piracy," and was authored by economist Stephen Siwek and released by the Institute for Policy Innovation.⁷ The study analyzed the losses of four copyright industries -- movies, music, software, and videogames -- to determine the full upstream and downstream economic consequences on the economy, including lost economic output, lost jobs, and lost tax revenues. Utilizing a sophisticated methodology developed by the U.S. Department of Commerce, that study concluded that an estimated \$25.6 billion in *industry* annual losses due to piracy actually equals lost *economic output* to the total economy of nearly \$60 billion a year. Moreover, this illegal activity costs American workers 373,000 jobs. And it costs governments \$2.6 billion in tax revenue.

These losses flow from IP theft just within the copyright industries alone. When you add counterfeiting in other sectors, the costs are simply staggering, and the FBI's 2002 estimate -- \$200 to 250 billion in losses annually -- appears to be quite conservative.

⁵ *Copyright Industries in the U.S. Economies: The 2006 Report*, by Stephen E. Siwek, http://www.iipa.com/pdf/2006_siwek_full.pdf

⁶ FBI Press Release, July 17, 2002, <http://www.fbi.gov/pressrel/pressrel02/outreach071702.htm>.

⁷ The study can be found at www.ipi.org or at http://www.copyrightalliance.org/files/u227/SiwekCopyrightPiracy_study.pdf.

III. The Shape of the Solution: The CACP Campaign to Protect America

A. The Content of the Campaign

When the experts from sectors across the economy informed me about the extent of the counterfeiting and piracy problem they were experiencing, I asked them what could be done. What, in their view, could make a real difference in alleviating the problem?

I'm pleased to report their response: while the situation is grave, it is not hopeless. The experts believed that strong action in three areas could have an impact, could reverse current trends, and could succeed in the long run. Those three areas are: (i) the development of technological tools; (ii) increasing private-sector responsibility; and (iii) strong government activity. Because the Act focuses on government activity, I will speak only briefly on the first two areas, but significant progress on each are critical to move the needle.

First, technology protections are a powerful tool to combat theft, whether we are talking about tangible goods or digital goods. These technologies will never be perfect, just as the best security systems in the world will never totally eliminate bank thefts. Nevertheless, committed development of technology has the potential to reduce dramatically the traffic in counterfeit and pirated products.

In the physical world, we are seeing advanced optical technologies, such as holograms and special color-shifting inks, employed to make counterfeiting of labels more difficult and genuine products easier to identify. Companies are using RFID technology, covert markers, even nanotechnologies, to help customs and other experts to distinguish between authentic and counterfeit goods.

On the digital side, while we know that technology is something that feeds piracy, it also can be harnessed to effectively combat it. Especially promising are filtering and blocking tools that can protect content in a wide range of applications.

Second, private sector responsibility must also play an important part. Counterfeiting and piracy are not just the rights holders' problem; they are a societal problem, and everyone has a stake in seeing to it that piracy and counterfeiting are reduced. That is why we are engaging in intensive private discussions with the full spectrum of our business partners: the entities involved in the distribution of our products, whose services are being misused by pirates and counterfeiters, and who thus are in a position to have a significant impact on the amount of piracy and counterfeiting taking place. Examples in the physical world include shippers, warehousemen, retailers and financial institutions. In the content community's world, key partners also include Internet Service Providers and universities, over whose broadband pipes pirated material is carried; consumer electronic and information technology companies, who can partner with us to make piracy more difficult; search engines through which pirated material is found; and auction sites through which people can sell pirated and counterfeit merchandise. All of these entities can and should take reasonable steps to reduce the ability of pirates and counterfeiters to misuse their services.

The CACP has engaged these sectors in discussions, and we have begun to make progress.⁸ And progress is being made in other countries, such as France, where the Olivennes report, released just weeks ago, reflects a groundbreaking agreement between content owners and ISPs to help reduce the volume of pirated material being distributed through French Internet providers.

All the experts realize, however, that whatever gains we could make through advances in protective technologies, and through negotiations on private sector responsibility, *must* be supplemented by active leadership by Congress and the Executive Branch on this issue. The private sector must do what it can, but IP enforcement clearly has to be a national priority for our effort to succeed.

The suggestions on improving the government's response to IP theft came from all quarters of the CACP's membership, and they can be grouped into three categories of activities that government can undertake to make a real difference.

First, we need real leadership institutionalized at the top levels of government on this issue. We need someone at the Department of Justice (DOJ) and Department of Homeland Security -- the two key enforcement agencies -- whose responsibilities prominently include leading their Department's efforts on IP enforcement. We need a high-level coordinator to orchestrate the many Departments and Agencies that have a part in IP enforcement, to synchronize their vital efforts into a unified strategic plan, and to proselytize for IP enforcement in this country and worldwide -- regardless of which party holds sway in the White House.

Second, the experts agree that we desperately need dedicated, trained personnel assigned to work exclusively on this issue. Given the size of the challenge we face, the number of law enforcement personnel actually devoted to IP on the federal, state, and local level is scandalously low.

The simple fact is that when IP enforcement falls to law enforcement agents with general jurisdiction, it generally falls off the radar screen. This is perfectly understandable: law enforcement agents are overwhelmed with important priorities, and many lack the specialized training needed to work counterfeiting and piracy cases. But if we are serious about enforcement, if we are serious about protecting our economic future, if we are serious about setting an example for our trading partners, then we can no longer let IP bring up the rear of the priority list. The best way to accomplish this is to have government personnel in key positions dedicated solely to addressing IP theft.

⁸ Just recently, major content companies and technology companies collectively issued "Principles for User Generated Content Services" to foster innovation, encourage creativity and thwart infringement. See <http://www.ugcprinciples.com>. While this effort was not conducted under the auspices of the CACP, it serves as a good example of the type of private sector cross-industry agreement that can spur real progress on this issue.

Third, I was told over and over again that too many of our laws were out of date, that fines and sentences were inadequate to provide real deterrence, and that we needed to ensure that the law in this area kept pace with the quick march of technology.

Inspired by these conversations, we enlisted our membership in a careful and lengthy process to advance proposals that would enable the government to better address this critical challenge. The proposals, called the “Campaign to Protect America,”⁹ are organized into six categories. These categories are:

- (1) Increase resources at the Department of Homeland Security and the Department of Justice;
- (2) Strengthen enforcement at the borders;
- (3) Toughen penalties;
- (4) Improve federal government coordination;
- (5) Reform civil and judicial processes; and
- (6) Educate consumers.

In each of these categories, there are detailed and well-considered proposals calling for strengthening the capacity of our government to respond to the variety of threats piracy and counterfeiting represent. While comprehensive, the CACP’s proposals are not radical: they call for targeted legal changes, not a wholesale reshaping of existing laws, and they should not be controversial.

B. The Cost of the Campaign

The CACP proposals do not seek to impose an enormous new financial burden on government, or simply throw money at the problem. At the same time, it must be acknowledged that real progress cannot be achieved without adding resources to our enforcement efforts. It is fair to ask whether making the kind of investment called for by the CACP proposals is a worthwhile expenditure of taxpayer dollars.

To help answer this question, we turned to Laura Tyson, a professor at the Haas School of Business at the University of California at Berkeley, and the former Chair of the National Economic Council, to prepare a report.¹⁰ The Tyson Report, which I mentioned at the outset, extensively analyzes the costs of all the CACP proposals, and concludes that, based on the cost of similar programs, the government would spend between \$289 and \$489 million over three years in implementing them.

⁹ Available at <http://www.thecacp.com/portal/counterfeiting/default>.

¹⁰ The Executive Summary of the report is attached as Exhibit B to this testimony; the entire report can be found at the website of the CACP: www.thecacp.com.

The Tyson Report then reviews the economic literature quantifying the losses on U.S. businesses caused by piracy and counterfeiting. Based on that literature, it concludes that a \$225 billion annual loss -- the midway point in the 2002 FBI estimated range of \$200 to \$250 billion -- is fair, and indeed quite conservative in light of the increase in the scope of piracy and counterfeiting during the last five years.

Finally, the Tyson Report concludes that, based on the success of other similar types of government programs, the CACP's approach can reasonably be expected to reduce losses attributable to piracy and counterfeiting somewhere between five and ten percent over three years. If that reasonable expectation comes to pass, putting these proposals into place would result in:

- Increased U.S. output of between \$27 and \$54 billion per year;
- Increased U.S. employment of 174,000 to 348,000 per year (after a three-year period);
- Additional federal tax revenues of between \$1.4 and \$2.8 billion; and
- Additional state and local tax revenues between \$1.25 billion and \$1.5 billion over three years.

If the measures succeed even modestly beyond these assumptions, the return on investment -- in terms of business, tax revenue, health and safety, and our economic future -- will be much higher.

While the Tyson Report is tied to the set of CACP proposals and not specifically to the provisions found in the Act, the soundness of its core analysis applies to this legislation with equal force: prudent government spending on IP enforcement is undoubtedly a worthy investment. The Tyson Report shows that for every dollar government of government spending in this area, we can expect some \$3.00 to \$9.00 returned to the government in the form of tax dollars, and at least \$38 and as much as \$127 in increased output, with the creation of between 174,000 and 348,000 new jobs in the third year of the program. We cannot afford to allow this opportunity to slip away.

IV. The Act

Now I turn to the provisions of the Act itself, which offer a thoughtful and well-balanced approach to the task of improving government's response to the crisis of IP theft.

As I noted at the outset, the key provisions of the Act can be organized under three categories, all of which are vital to address this problem. These are: (i) creating and institutionalizing high-level leadership; (ii) authorizing dedicated resources; and (iii) updating the laws to keep pace with technology. While there are many examples I can choose from in this comprehensive piece of legislation, I will address only the key provisions under each category.

A. Institutionalizing High-Level Leadership

If IP enforcement is a priority, we must have leadership and an integrated strategy for addressing this complex problem. The Act delivers this in several ways.

1. Chief Intellectual Property Enforcement Officer

The centerpiece of the Act is found in Title III, “Coordination and Strategic Planning of Federal Effort Against Counterfeiting and Piracy.” That Title creates within the Executive Office of the President the “Office of the United States Intellectual Property Enforcement Representative,” headed by the U.S. IP Enforcement Representative.

Title III uses the Office of the United States Trade Representative as a precedent, and the choice is an inspired one. Like international trade agreements, IP enforcement is a function that cuts across the responsibilities of a number of departments and agencies. Like trade, IP enforcement would benefit from designating a high-level government official, backed by a specialized expert staff, to coordinate the efforts of these departments and agencies, and serve as a voice for IP enforcement in the highest circles of the government. Without an orchestra leader, it is difficult to make sure that all the agencies are playing off the same sheet of music in their efforts to protect intellectual property. That point was underscored when the GAO testified before you last month, and noted how many offices in the federal government play an important role in setting and implementing IP enforcement policy.¹¹

There have been two efforts in recent years to ensure that all these agencies are rowing the boat in the same direction: the National Intellectual Property Law Enforcement Coordination Council (NIPLECC), created by Congress in 1999, and the Strategy for Targeting Organized Piracy (STOP), initiated by the White House in 2004. As the GAO testimony makes clear, however, “the current coordinating structure for U.S. protection and enforcement of intellectual property rights lacks clear leadership and permanence, hampering its effectiveness and long-term viability.” *Id.* at 13.

The solution proposed by Title III of the Act would cure the weakness in the current structure by providing government leadership on IP enforcement *on a permanent basis and at the highest level*. Moreover, the Act gives the IP Enforcement Representative the right powers and responsibilities. These include: developing a triennial joint strategic plan to ensure all the agencies are working in harmony and on the same priorities; coordinating all U.S. government efforts to help foreign countries act more effectively against counterfeiting and piracy activities that affect our market; advising the President on domestic and international IP enforcement policy, assisting the USTR on IP trade issues; acting as the principal spokesperson of the President on domestic and international IP enforcement matters; and reporting to Congress and the American people. The Act goes on to provide detailed and helpful instructions as to the process and content of the joint strategic plan, and the reporting and oversight that Congress -- and the American taxpayer -- should rightfully expect.

¹¹ Statement of Loren Yager, Director International Affairs and Trade, at pp. 6-7 (<http://www.gao.gov/new.items/d08177t.pdf>).

Before moving on, I would make two points:

First, the concept of elevating the leadership on IP to the White House level has been tirelessly championed by Senators Bayh and Voinovich, and I would be remiss not to publicly acknowledge their important contributions to this debate.

Second, I want to stress that our support for this proposal should not be taken as criticism of the current administration's efforts on IP. In fact, we applaud those responsible for devising and carrying out the STOP program, and we recognize the strides that NIPLECC has taken under Chris Israel. Many in the administration deserve great praise for their steadfast devotion to protecting IP, including Secretary Carlos Gutierrez and Ambassador Susan Schwab.

This legislation takes the right approach precisely because it builds on these good efforts, and appropriately raises the bar in light of the increasing scale of the threat we face. We look forward to working with you to enshrine the office of IP Enforcement Representative as a permanent and crucial core of our IP enforcement landscape.

2. The Intellectual Property Enforcement Division at DOJ

Another bold step undertaken in this legislation is found in Title V, Section 501, establishing an "Intellectual Property Enforcement Division," in the Justice Department, headed by the Intellectual Property Enforcement Officer ("IP Officer"). This IP Officer would have the responsibility to coordinate all of DOJ's IP efforts among the many divisions, units and offices whose work is vital to IP enforcement. These include, among others, the FBI, the Criminal Division, the Civil Division, the Executive Office of U.S. Attorneys, and the Antitrust Division. The Division would include the attorneys and other personnel who work on IP enforcement and are presently housed in the Computer Crime and Intellectual Property Section of the Criminal Division.¹²

We applaud this proposal, which would permanently raise IP enforcement to its rightful place as a top priority of the Justice Department, regardless of who occupies the Attorney General's office.

B. Authorizing Dedicated IP Resources

Leadership is vital, but without adequate resources, our generals in the fight against counterfeiting and piracy will have no army to command. According to FBI statistics, in the U.S., all traditionally defined property crimes accounted for \$16 billion in losses in 2005. As we have discussed, however, the best estimates we have for losses from piracy and counterfeiting exceed that number by ten or fifteen times. The law enforcement response needs to be commensurate with the scale of the threat and with the gravity of the injury to our economy and our safety.

¹² It may also make sense to bring into the IP Enforcement Division those attorneys in the Civil Division's Commercial Litigation Branch who specialize in civil IP enforcement.

Right now, the amount of resources dedicated to IP enforcement across our government is miniscule. If IP enforcement is really going to increase, we must have dedicated personnel in key positions, who do not have to juggle IP enforcement along with a host of other duties, but instead whose only responsibility is to enforce the laws against counterfeiting and piracy.

Several provisions of the Act deserve special notice in this regard, adding dedicated resources in federal enforcement, state enforcement, and enforcement overseas.

1. Federal Investigative and Prosecutorial Resources

The DOJ has set up Computer Hacking and Intellectual Property (CHIP) Units within twenty-five U.S. Attorney's offices around the country. Section 512(b)(2) of this Act requires the assignment of at least one more federal prosecutor to each unit, for the specific purpose of bringing piracy and counterfeiting cases. Section 512(b)(1) authorizes at least two additional FBI agents to be assigned to work exclusively on IP crimes within each CHIP unit. And 512(b)(3) would add 10 more CHIP units, so that CHIP units were housed in approximately a third of the US Attorney's Offices across the country.

This is one of the most important provisions of the bill. Rights holders and enforcement officials alike tell us that IP crimes consistently draw the short straw, because the limited investigative resources of the FBI are generally assigned elsewhere. Those computer-savvy agents who have IP in their portfolio are often pulled off IP cases to investigate time-sensitive computer hacking cases, allowing their IP investigations to lie fallow. Without investigative agents to work their IP cases, prosecutors turn their attention to other matters. The Act would help terminate this vicious cycle.

The Act would also assign at least five agents to an operational unit at FBI headquarters, dedicated to working with the Intellectual Property Division on the development, investigation, and coordination of complex, multi-district, and international criminal intellectual property cases. Having operational FBI agents specifically assigned to work with trained IP prosecutors will enable DOJ to have an elite team to investigate highly complex criminal IP cases.

Other provisions within Title V of the Act would upgrade IP enforcement training for investigators both within and outside the CHIP units, and direct the Attorney General to ensure that adequate computer forensic support is available to DOJ personnel in IP criminal cases. Taken together, these changes will make the Department far more effective in the fight against counterfeiting and piracy, and the number of cases investigated and defendants prosecuted should increase accordingly.

2. State and Local Law Enforcement Grants

Even with additional resources, federal law enforcement is spread thin, and can only be expected to focus on the worst offenders and the most complex IP cases. By contrast, in our federal system, the overwhelming majority of law enforcement resources are found at state and local levels. These authorities already play a pivotal role in the fight against counterfeiting and piracy, but unless we devote more resources to improving the ability to carry out enforcement at the state and local level, our nation has little hope of reducing IP theft to a meaningful degree.

The Act addresses this issue in Title V, Section 511, authorizing local law enforcement grants, called IP-TIC grants, “for training, prevention, enforcement and prosecution of intellectual property theft and infringement crimes.” Such grants would have a wide range of potential applications, but would be most useful in supporting the creation of trained units consisting of state and local prosecutors and agents who can focus on local IP crime. Such grants can be used to support task forces, comprised of federal, state and local investigators and prosecutors working together to address the problem strategically in whatever jurisdiction best furthers the case.

We suggest that IP-TIC grants should favor the states and localities that put forth plans to create dedicated prosecutorial and investigative units that work full-time on IP enforcement. As discussed in terms of federal resources, “part-time” IP prosecutors and investigators too often turn out to be ineffective, as their efforts are siphoned off elsewhere and the IP cases are put to the side. Explicit language favoring the creation of dedicated squads would address this very real concern.

3. Dedicated International Resources

Addressing the problem of IP theft in our backyard is essential, but it is not by itself a solution. Counterfeiting and piracy are worldwide problems that require all countries to increase their focus on the issue and to cooperate with one another on trans-border crime.¹³

The Act recognizes this in three ways. DOJ has already placed two “Intellectual Property Law Enforcement Coordinators” (IPLECs) in our Embassies in Budapest and Bangkok, where they work in conjunction with efforts to crack down on counterfeiting and piracy in those regions. The Act (Section 521) builds on this initiative by directing the placement of five more IPLECs in key regions that are the sources of counterfeit and pirate products that enter our marketplace. The IPLECs (which would be part of the new IP Enforcement Division) would liaise with law enforcement agencies in these regions, carry out training activities to improve their enforcement capacities, and coordinate U.S. law enforcement efforts against transnational counterfeiting and piracy syndicates operating in these regions.

¹³ On this note, we welcome the October 23 announcement by USTR that the U.S. and some of its allies would pursue an Anti-counterfeiting Trade Agreement that would raise the bar on the expected level of activities by signatories in this vital arena.

Second, the Act (Section 522) directs the IP specialists in the IP Enforcement Division to provide additional training and technical assistance to foreign governments, especially in priority countries where such training can be carried out most effectively.

Third, the Title IV of the Act builds on a successful initiative of the Patent and Trademark Office to appoint “Intellectual Property Attachés” to serve in key US Embassies around the world. These attachés have already been effective advocates for tougher intellectual property enforcement efforts in China and other countries. Under the Act, ten more attachés would be placed in priority countries, with a broader mission than the Justice Department IPLECs, including serving as in-country resources to advance the interests of US companies attempting to create and protect IP abroad, and coordinating efforts of U.S. Embassies and missions to work with like-minded nations to enhance IP enforcement in the host countries.

For far too long, both here and abroad, counterfeiting and piracy have been perceived as high-profit, low-risk enterprises for organized criminal groups. That has begun to change. By placing dedicated enforcement resources at the federal, state and local levels, and in key markets overseas, this Act will accelerate that change, and increasingly make IP theft a crime that does not pay.

C. Updating the Laws

The Act is also noteworthy for the way it updates the laws in a sensible and uncontroversial manner to respond to changes in technology. A few examples follow:

- Title I, Sections 105 and 106, increasing the availability of treble damages in counterfeiting cases, and doubling statutory damages for counterfeiting, which have remained unchanged since 1996. The vast growth in the scope and profitability of counterfeiting enterprises mandates that penalties keep pace, or they will lose their deterrent value;
- Title I, Sections 107 and 108, outlawing the export of counterfeit or pirate product from the United States, a prohibition that we have long urged our trading partners to enact;
- Title II, Section 201, ensuring that a copyright pirate who has been convicted for violating one provision of the criminal copyright laws is treated as a repeat offender if he violates a different provision of that law;
- Title II, Section 202, harmonizing the inconsistent forfeiture provisions that have emerged among the various IP criminal laws; and
- Title II, Section 204, raising the criminal penalty for acts of counterfeiting that results in death or serious bodily harm.

We must make sure our criminal and civil laws remain adequate to counter the ongoing menace of IP theft. This Act goes a long way toward that goal.

While the Act would not implement all the CACP proposals, we are pleased that it addresses most of the critical needs. For example, while the Act does not empower the Department of Justice to bring civil cases against counterfeiters and pirates for conduct that would also violate the criminal statutes, it does ensure that Justice will put a higher priority on IP enforcement. Furthermore, several provisions of the Act contain compromise versions of CACP proposals. While language consistent with the original CACP proposals would have been preferable, we understand the sponsors' reasons for altering these proposals, and believe they have struck a good balance between the need for stronger IP protection and the concerns of Internet Service Providers, grey marketers, the criminal defense bar, Internet commerce companies, and others.

V. Conclusion

The scope of the challenge posed by counterfeiting and piracy sometimes seems overwhelming. Make no mistake: the problem is vast and there is no simple set of solutions. But we have found that, by banding together in groups like CACP, by devoting serious thought and effort to solutions, and by articulating those solutions in a clear manner, we can make a difference.

Likewise, in crafting this carefully considered and critical legislation on a bipartisan basis, this Committee has given hope to those who struggle against this scourge on a daily basis. The CACP applauds you for your efforts, and we stand ready to do whatever it takes to help you enact this bill into law.

Thank you for this opportunity to testify.

EXHIBIT A

CACP Membership List

Associations

1. Advanced Medical Technology Association (ADVAMED)
2. American Electronics Association(AeA)
3. Aerospace Industries Association (AIA)
4. Air Conditioning and Refrigeration Institute
5. Alliance of Automobile Manufacturers (AAM)
6. American Apparel & Footwear Association (AAFA)
7. American Association of Exporters and Importers (AAEI)
8. American Chamber of Commerce in Argentina
9. American Chamber of Commerce in Denmark
10. American Chamber of Commerce in France
11. American Chamber of Commerce in Germany
12. American Chamber of Commerce in Guatemala
13. American Chamber of Commerce in Kosovo
14. American Chamber of Commerce in Poland
15. American Chamber of Commerce in Singapore
16. American Chamber of Commerce in Spain
17. American Chamber of Commerce in Sweden
18. American Chamber of Commerce, Kyrgyz Republic
19. American Chamber of Commerce, Norway
20. American Council of Independent Laboratories (ACIL)
21. American Intellectual Property Lawyers Association (AIPLA)
22. American Lebanese Chamber of Commerce
23. American Made Alliance
24. American Petroleum Institute (API)
25. American Society of Association Executives (ASAE)
26. Americans for Tax Reform
27. Art Copyright Coalition
28. Association for Competitive Technology (ACT)
29. Association of Equipment Manufacturers (AEM)
30. Association for Suppliers of Printing, Publishing and Converting Technologies (NPES)
31. Automotive Aftermarket Industry Association (AAIA)
32. Brand Protection Alliance (BPA)
33. Business Software Alliance (BSA)
34. Canadian Consulate General
35. Center for Health Transformation (CHT)
36. Coalition Against Organized Retail Crime
37. Computer Technology Industry Association (CompTIA)
38. Consumer Electronics Association (CEA)
39. Cyprus-American Business Association
40. Detroit Regional Chamber
41. Electronic Industries Alliance (EIA)
42. Electronic Resellers Association International, Inc. (ERAI)
43. Entertainment Software Association (ESA)

44. European American Business Council (EABC)
45. Free Speech Coalition
46. Food Marketing Institute (FMI)
47. Friendship Foundation of American Vietnamese (FFAVN)

Associations (continued)

48. Gas Appliance Manufacturers Association (GAMA)
49. Generic Pharmaceutical Association (GPhA)
50. Global Business Leaders Alliance Against Counterfeiting (GBLAAC)
51. Greeting Card Association (GCA)
52. Grocery Manufacturers/Food Products Association (GMA/FPA)
53. Healthcare Distribution Management Association (HDMA)
54. Imaging Supplies Coalition (ISC)
55. Intellectual Property Owners Association (IPO)
56. International Authentication Association (IAA)
57. International Anti-Counterfeiting Coalition (IACC)
58. International Anti-Counterfeiting Coalition Foundation
59. International Association of Amusement Parks and Attractions (IAAPA)
60. International Association for Exhibition Management (IAEM)
61. International Communications Industries Association (ICIA)
62. International Federation of Phonographic Industries (IFPI)
63. International Housewares Association (IHA)
64. International Intellectual Property Institute (IIPi)
65. International Trademark Association (INTA)
66. Kenan Institute of Private Enterprise
67. Kent Chamber of Commerce
68. Lansing Regional Chamber of Commerce
69. Los Angeles Area Chamber of Commerce
70. Magazine Publishers of America (MPA)
71. Mississippi Manufacturers Association
72. Motion Picture Association of American (MPAA)
73. Motor & Equipment Manufacturers Association (MEMA)
74. Motorcycle Industry Council (MIC)
75. National Academy of Recording Arts & Sciences
76. National Association of Manufacturers (NAM)
77. National Chamber Foundation (NCF)
78. National Electrical Manufacturers Association (NEMA)
79. National Electronic Distributors Association (NEDA)
80. National Foundation for Women Legislators
81. National Foreign Trade Council
82. National Marine Manufacturers Association (NMMA)
83. Outdoor Power Equipment Institute (OPEI)
84. Pharmaceutical Research and Manufacturers of America (PhRMA)
85. Precision Metalforming Association (PMA)
86. Recording Industry Association of America (RIAA)
87. Rubber Manufacturers Association (RMA)
88. Russian Chamber of Commerce & Industry in the USA
89. Santa Monica Chamber of Commerce
90. Semiconductor Equipment and Materials International (SEMI)
91. Semiconductor Industry Association
92. SGS Global Trade Solutions, Incorporated (SGS)
93. Society of the Plastics Industry, Inc. (SPI)
94. Software and Information Industry Association (SIIA)
95. Specialty Equipment Market Association (SEMA)

96. Swiss-American Chamber of Commerce
97. Toy Industry Association (TIA)
98. U.S. Council for International Business (USCIB)

Businesses

1. 3M Company
2. A. Louie Associations Corporation
3. A-Systems Incorporated
4. Abercrombie & Fitch
5. Ablebodee Associates
6. Accenture
7. ACME-Teleforensics, LLC
8. ACCU-BREAK Pharmaceuticals, Inc.
9. Activision
10. Acucote Inc.
11. AIG Consultants, Inc.
12. AIM Global
13. Alexander Watson Associates
14. All to Success
15. Alston & Bird LLP
16. Alte Biosciences Incorporated
17. Altria Group, Inc.
18. AMCO Plastic Materials, Inc.
19. American Banknote Holographics, Inc.
20. American Standard Companies, Inc.
21. AmerisourceBergen Corporation
22. Amgen Inc.
23. Analysis Research Planning Consulting (ARPC)
24. Aplicor Inc.
25. Applied DNA Sciences
26. Aramco Services Company
27. Archstone Consulting
28. Arent Fox PLLC
29. Areva T&D Inc.
30. Ark Home Entertainment
31. ARmark Authentication Technologies
32. Arnold & Porter LLP
33. Arxan Technologies
34. Ashton-Potter (USA) Ltd.
35. ATB Security
36. ATL Pharma Security Label Systems (ATL)
37. Authentix, Inc.
38. Automation Alley
39. Baca, Garcia & Gannon, LLP
40. Baker & Hostetler LLP

99. U.S. Chamber of Commerce
Vision Council of America (VCA)
100. XLA Express Delivery and
Logistics Association
41. Baker & McKenzie LLP
42. Bandai America Inc.
43. Bandai Namco Group
44. Baxter Healthcare Corporation
45. Bayer Healthcare – Biological Products
46. BD Consulting and Investigations, Inc.
47. BellSouth Corporation
48. Benchmade Knife Company
49. Bendix Commercial Vehicle Systems LLC
50. Better Health Care Products Corp.
51. Biomerieux, Inc.
52. Blank Rome Government Relations LLC
53. Blazer Investigations
54. Bose McKinney & Evans LLP
55. Bradley, Andrew, Christopher, & Kaye
56. Brady Corporation
57. Brand Security Corporation
58. Brain League IP Services Private, LTD
59. Brand Enforcement UK Ltd.
60. Brand Protection Ltd.
61. British American Tobacco
62. Buchalter Nemer
63. Bunco Collection LLC
64. Building Blox
65. Bullivant Houser Bailey PC
66. Burkhalter, Kessler, Goodman, & George
67. Business Consulting & Investigations Inc.
68. Business Success Strategists, LLC
69. buySAFE, Inc.
70. BuzzeoPDMA, a division of Dendrite International
71. C&M International, LTD
72. Call, Jensen, and Ferrell
73. Cardinal Law Group
74. Cargill & Associates, PLLC
75. Carolina Junior Elite Training System (J.E.T.S.)

- 76. Cascade Designs, Inc.
- 77. Center for Medicines in the Public Interest
- 78. Century Bank and Trust
- 79. Chanel, Inc.

Businesses (continued)

- 80. Charles T. Joyner, PLLC
- 81. Charter Technologies, LLC
- 82. ChemImage Corporation
- 83. Cisco Systems
- 84. Click, Inc.
- 85. Cleveland Golf
- 86. Coach, Inc.
- 87. Coats & Bennett, PLLC
- 88. Coffee Bean & Tea Leaf
- 89. Coliant Corporation
- 90. Collection 2000 Cosmetics, Inc.
- 91. Colorcon, Inc.
- 92. Corporate Express Document & Print Management
- 93. CPA North America
- 94. CropLife America
- 95. CropLife International
- 96. CTP, Inc.
- 97. Danaher Motion India
- 98. Dayco Products, LLC
- 99. Deckers Outdoor Corporation
- 100. Definitive Communications
- 101. deKieffer & Horgan
- 102. De La Rue Security Print Inc.
- 103. Democracy Data & Communications (DDC)
- 104. DHL
- 105. Diligence USA, LLC
- 106. DMN Americas Inc.
- 107. Dai Nippon Printing Company
- 108. Discover Hollywood Publications
- 109. Document Security Systems, Inc.
- 110. Dolby Laboratories, Inc.
- 111. Dreier LLP
- 112. Duncan Investigations
- 113. DuPont
- 114. Dwight Law Group
- 115. Eastman Kodak Company
- 116. Eaton Electrical
- 117. eBay Inc.
- 118. Economist Group

- 119. Efficient Research Solutions, Inc.
- 120. Electronic Arts
- 121. Electronic Supply Chain Solutions
- 122. Eli Lilly and Company
- 123. Enertia Building Systems, Inc.
- 124. Engineous Software, Inc.
- 125. E.N. Television
- 126. Ernst & Young
- 127. Everson CHB Inc.
- 128. The Fairfax Group
- 129. Fashion Business Incorporated
- 130. Fashion Institute of Design and Merchandising
- 131. Federal-Mogul Corporation
- 132. Federal Strategy Group
- 133. Federal Express
- 134. First on the Seam
- 135. Flex-a-lite
- 136. Flightline Aviation Wear
- 137. Flowmaster
- 138. Foilflex Products
- 139. Ford Motor Company
- 140. Fox Group
- 141. Frazee Associates LLC
- 142. Fulbright & Jaworski, LLP
- 143. The Gallup Organization
- 144. Gallus Inc.
- 145. Ganum
- 146. Gehrke & Associates, SC
- 147. Genesis Smith-Benton
- 148. GenuOne, Inc.
- 149. General Motors Corporation (GM)
- 150. Gillette
- 151. Glast, Phillips & Murray, P.C.
- 152. Glaxo-SmithKline
- 153. Global Anti-Piracy Agency
- 154. Global Credit Solutions Pty Ltd
- 155. Global IP Counselors, LLP
- 156. Global Risk Solutions Asia Corporation
- 157. Global Validators, Inc.
- 158. Goldman Organization
- 159. Goodrich Aerospace Corporation

- 160. Google, Inc.
- 161. Governors America Corporation
- 162. Grant Thornton LLP
- 163. Graphic Security Systems Corporation
- 164. Grayson USA, LLC
- 165. Gregory J. Ellis, Esq., Ltd.

Businesses (continued)

- 166. Gruman Development & Technologies
- 167. Guardian Academics
- 168. Hanes Brand, Inc.
- 169. Harley-Davidson
- 170. Hemaya Universal
- 171. Hofherr Law
- 172. Holman Moody and Holman Automotive
- 173. Holmes & Lofstrom, LLP
- 174. Holomex
- 175. Honeywell International Inc.
- 176. Hologram Company Rako, GmbH
- 177. Honigman Miller Schwartz & Cohn LLP
- 178. Howard & Howard Attorneys, PC
- 179. Hunton & Williams LLP
- 180. Hutchison Law Group
- 181. H.W. Sands Corporation
- 182. IBM Corporation
- 183. IBS Corporation
- 184. Identco
- 185. Infineon Technologies Corp.
- 186. Infragard
- 187. InfraTrac
- 188. Inkongruent
- 189. Institute for Policy Innovation
- 190. Intellectual Property Technology Law
- 191. Inter-Lingua
- 192. Internet Crimes Group, Inc.
- 193. Internet Law Group
- 194. IntegriChain
- 195. Intel Corporation
- 196. Investigative Consultants
- 197. I-OnAsia Ltd
- 198. IP Services Inc.
- 199. IPCybercrime.com LLC
- 200. ISISAN
- 201. IsoCiser Systems, Inc.

- 202. Jackson Walker, LLP
- 203. JAG
- 204. Jet Propulsion Laboratory
- 205. J. Mark Holland & Associates
- 206. Johnson & Johnson
- 207. Jones Day
- 208. Keats McFarland & Wilson LLP
- 209. Kent & O'Connor, Incorporated
- 210. Kelley Drye Collier Shannon
- 211. Key & Keys LLC
- 212. Kilpatrick Stockton LLP
- 213. Knobbe Martens Olson & Bear LLP
- 214. KRE8IT Video Productions
- 215. Kurz Transfer Products LP
- 216. LA County Economic Development Company
- 217. LA Fashion District
- 218. Label Technique Southeast
- 219. Laguna Components, Inc.
- 220. LaMagna and Associates
- 221. Lameer Group LLC
- 222. LaRiviere, Grubman & Payne
- 223. laSalle Licensing, LLC
- 224. Lauson & Schewe, LLP
- 225. Law Offices of Dorie Choderker
- 226. Law Offices of Francis John Cowhig
- 227. Law Offices of Mann & Zarpas
- 228. Levi Strauss & Co.
- 229. Lexmark International
- 230. Lockheed Martin Aspen Systems
- 231. LORD Corporation
- 232. L'Oreal USA
- 233. M Capitol Management
- 234. Major League Baseball Enterprises, Inc.
- 235. Mann Theatres
- 236. Mary Kay, Inc.
- 237. MarkMonitor
- 238. Mayback & Hoffman, PA
- 239. Mayo Communications
- 240. The McGraw-Hill Companies
- 241. MediaDefender

- 242. Merck & Company
- 243. MEMSCAP, Inc.
- 244. Meyercord Revenue Inc.
- 245. Microsoft Corporation
- 246. Milgard Manufacturing, Inc.
- 247. Miller, Canfield, Paddock and Stone,
P.L.C.
- 248. Miller Nash LLP

Businesses (continued)

- 249. Molecular Isotope Technologies,
LLC
- 250. The Money Finders, Inc.
- 251. Monsanto
- 252. Moore & VanAllen PLLC
- 253. Manufactures' Qualification and
Validation Program, Inc. (MQVP)
- 254. MichiganMall.com
- 255. Mystic Medicines, Inc.
- 256. Nanofilm Ltd.
- 257. NanoInk, Inc.
- 258. National Biopharmaceutical Security
Council (NBSC)
- 259. National Broadcasting Corporation
(NBC)
- 260. National Trademark Investigations
- 261. Nelson Mullins Riley &
Scarborough, LLP
- 262. Net Enforcers, Inc.
- 263. New Balance Athletic Shoe, Inc.
- 264. Newbridge Associates
- 265. Neweel, Campbell & Roche, LLP
- 266. New Momentum
- 267. News Corporation
- 268. Nike, Inc.
- 269. Nokia Inc.
- 270. Northwest Attraction Council
- 271. Oakley
- 272. Oblon, Spivak, McClelland, Maier &
Neustadt, PC
- 273. Olive & Olive, PA
- 274. OpSec Security, Inc.
- 275. ORBID Corporation
- 276. Parker Poe Adams & Bernstein LLP
- 277. Partners 4 Management GmbH
- 278. Payne North America
- 279. Paxar Corporation
- 280. Peerscent, Inc.
- 281. Performance Systems

- 282. Pernod Ricard USA
- 283. Pfizer, Inc.
- 284. Plaza Bank
- 285. Podium Distribution
- 286. Political Capital, LLC
- 287. Polo Ralph Lauren
- 288. Pop! Technology
- 289. Porter Wright Morris &
Arthur LLP
- 290. Polyonics Incorporated
- 291. Precision Pumping Systems,
Inc.
- 292. Prestige Label Company
- 293. Prime Business Credit
- 294. Procter and Gamble
- 295. Product Safety Letter
- 296. Professional Electrical
Apparatus Recyclers League
- 297. Property Rights Alliance
- 298. Quest Kids Clothing
- 299. QP Semiconductor Inc.
- 300. QX Incorporated
- 301. R² Designs, LLC
- 302. RAI Corporation
- 303. Rand Corporation
- 304. R.E. Holdings International,
Inc.
- 305. The Reagan Group LLC
- 306. Reconnaissance International,
Ltd.
- 307. Reebok International, Ltd.
- 308. Reed Elsevier Inc.
- 309. Regent Investigation, Ltd.
- 310. Resource LabelGroup, LLC
- 311. RF Commerce, LLC
- 312. RFID4U
- 313. RFID World
- 314. RMC Associates
- 315. RM Theatre Corporation
- 316. Robert Branand International
- 317. Rock-Tenn Company
- 318. Rodriguez, O'Donnell, Ross
and Fuerst
- 319. Rouse and Company
International
- 320. RR Donnelley
- 321. SafeMedia Corporation
- 322. sanofi-aventis
- 323. Santa Monica Place

- 324. Schreiner Group – GmbH & Co. KG
- 325. Science of Racing
- 326. Seagate Technology, LLC
- 327. Secure Symbology, Inc.
- 328. Securitas Global
- 329. Security & Risk Management Group, LLC
- 330. Seiter & Co.

Businesses (continued)

- 331. Shang & Associates, LLC
- 332. SICPA Securink Corporation, North America
- 333. Sierra Scientific Instruments
- 334. Signoptic
- 335. Silicon Edge Law Group, LLP
- 336. Silver Lake Jewelers LLC
- 337. Singular ID Pte. Ltd.
- 338. SGS SA
- 339. Smith & Rendon, LLP
- 340. SolarTech Corporation
- 341. SourceCode
- 342. Southwest Research Institute
- 343. SPC Consulting
- 344. Square D Company
- 345. SSC, Inc.
- 346. Staas & Halsey LLP
- 347. Star Financial Resources, LLC
- 348. The Steele Foundation
- 349. ST Microelectronics
- 350. Sun Chemical Corporation
- 351. SureFire, LLC.
- 352. Tahitian Noni International
- 353. TASKS Investigations and IP Law Enforcement
- 354. Technical Solutions LLC
- 355. Technicote, Inc.
- 356. Tesa Scribos GmbH
- 357. ThinSpring
- 358. Thumbnail Media
- 359. Tiffany & Co.
- 360. Time-Warner
- 361. Topflight Corporation
- 362. Torys, LLP
- 363. TracTag, LLC
- 364. Trade Innovations, Inc.
- 365. Trane
- 366. Transpro, INC

- 367. Traphagen Law PLLC
- 368. Trenton West
- 369. TROY Group, Inc.
- 370. True Religion Brand Jeans
- 371. TRW Law Group
- 372. TUV Rheinland Group
- 373. UltraDots, Inc.
- 374. Underwriters Laboratories, Incorporated
- 375. Universal Music Group
- 376. Uniweld Products, Inc.
- 377. Unzipped
- 378. UPM Raflatac
- 379. The Upper Deck Company, LLC
- 380. USA For Innovation
- 381. Valor
- 382. Vectra Fitness, Inc.
- 383. Venable LLP
- 384. Verical, Inc.
- 385. VeriSign, Inc
- 386. Verizon Communications, Inc.
- 387. Viacom Inc.
- 388. Visteon
- 389. VoiceMuffler Corporation
- 390. Walt Disney Company
- 391. Ward and Smith PA
- 392. Warn Industries, Inc.
- 393. Warner Brothers Studios
- 394. Warner Music Group
- 395. WebEyeQ
- 396. Week Days Clothing's
- 397. Weldon, Williams and Lick Inc.
- 398. Wheaton Science Products
- 399. Whitehall Bureau of Canada Limited
- 400. Williams & Jensen
- 401. Wine Stem Company
- 402. Wolf Block Public Strategies
- 403. Womble Carlyle Sandridge & Rice LLC
- 404. Wyeth
- 405. Xerox Corporation
- 406. Yahoo!, Inc.
- 407. Yottamark, Inc.
- 408. Zippo Manufacturing Company

EXHIBIT B

LECG Executive Summary

Executive Summary

A. The Need to Increase U.S. Government Anti-Counterfeiting and Anti-Piracy Efforts

The health of the US economy depends on a wide range of industries that rely on intellectual property (IP) to create and produce state-of-the-art products (i.e., IP-intensive industries).¹⁴ Unfortunately, counterfeiting and piracy are robbing these industries of the intellectual property on which their profitability and growth rest and on which the long-run competitiveness of the US economy depends. The industries harmed by counterfeiting and piracy and the industry associations that represent them are devoting substantial amounts of capital and management talent to combat counterfeiting and piracy. But private business efforts to control these problems must be augmented by public efforts by both the U.S. and foreign governments to identify, capture and punish counterfeiters and pirates.

Counterfeiting and piracy are forms of property crimes, and the U.S. government has an important role to play in limiting such crimes on law enforcement grounds alone. Counterfeiting and piracy also both reduce job and income opportunities for Americans and reduce tax revenues at federal, state and local levels by imposing significant losses on the operations of legitimate businesses. Finally, the public interest in controlling counterfeiters and pirates goes beyond considerations of property, jobs, and government revenues to encompass concerns about safety and health. Several recent events have demonstrated that the health and safety of the American public are at risk from inferior,

¹⁴ IP-intensive industries are defined in Appendix A. IP-intensive industries are those that create intellectual property and also those that rely on intellectual property to create state-of-the-art products which often have well-identified brand names. IP-intensive industries include motion pictures, sound recordings, software, fashion, pharmaceuticals, consumer electronics including personal computers, electronic components, automotive, aircraft, aerospace, toys, games, publishing, and numerous other industries.

potentially dangerous counterfeit products. And counterfeiting and piracy pose mounting risks to America's national security as organized crime groups and terrorist organizations play growing roles.

The U.S. government already has substantial anti-counterfeiting and anti-piracy efforts in place. However, according to the U.S. Government Accountability Office (GAO), these efforts could be significantly improved primarily through strong permanent leadership to foster better coordination within and among federal government agencies and between them and state, local and foreign government authorities and private industry. Based on an extensive review, the GAO has also concluded that the U.S. government's anti-counterfeiting and anti-piracy effort needs strong permanent leadership, that more dedicated resources are needed to combat counterfeiting and piracy, and that the government agencies need more efficient and effective anti-piracy and counterfeiting operations (i.e., there is a need to "work smarter.") The OECD reached similar conclusions in its recent review of government efforts to combat counterfeiting and piracy around the world.

The Coalition against Counterfeiting and Piracy (CACP) has recently proposed a broad initiative of actions to be taken by the federal government to enhance its efforts to control piracy and counterfeiting. The measures proposed by the CACP are consistent with the GAO's recommendations. The CACP's call for prompt stronger action by the federal government reflects the fact that the losses to American companies and the dangers to American consumers resulting from piracy and counterfeiting are growing rapidly as technology makes counterfeit products harder to detect and easier and cheaper to produce.

The purpose of this report is to provide an objective evaluation of the CACP initiative by providing estimates of the expected budgetary costs of the actions it proposes and estimates of the expected benefits of these actions. Reflecting limitations on the

availability and reliability of underlying data and studies, we present a range of estimates for both the costs and benefits. In both cases, the estimates we present are conservative - we believe that our estimates of costs are on the high side of the likely range and our estimates of benefits are on the low side of the likely range.

B. Summary of Major Findings

Based on our research, we have reached the following conclusions about the costs and benefits of the enactment of the CACP initiative:

1. Measured in present value terms, the CACP initiative would cost between \$0.289 billion and \$0.489 billion during the first three years. We have based our cost estimates on the costs of similar government programs. Most of the costs of the CACP initiative are costs of hiring additional federal government personnel to combat piracy and counterfeiting and training government personnel working in this area. The personnel costs of the CACP proposal include the appointment of a Chief IP Enforcement Officer (CIPEO) in the White House to coordinate the efforts of the federal government and of other U.S. and foreign government agencies responsible for reducing piracy and counterfeiting. Our cost estimates also reflect the provision of resources and legal tools to allow the IPR enforcement agencies to “work smarter.”
2. According to estimates by the FBI and other sources, U.S. companies lose at least \$225 billion each year to piracy and counterfeiting. Measured in present value terms, we estimate that the CACP initiative would reduce these losses by between \$18.4 billion and \$36.8 billion during the first three years. Our estimates assume that enactment of the CACP initiative would reduce these losses by between 5 percent and 10 percent by the third year. These estimates of success appear conservative and reasonable based on the carefully documented success rate achieved in reducing property theft by the CompStat Program of the New York Police Department, which has many similar features to those of the CACP initiative. This success rate is also consistent with the experience under the U.S. Department of Justice’s initiatives to combat computer and intellectual property crime.

3. Even using pessimistic estimates of the reduction in the losses of U.S. business revenues from piracy and counterfeiting, the enactment of the CACP initiative would increase U.S. output by about \$27 billion a year and would increase U.S. employment by about 174,000 a year after three years. Using our optimistic estimates of the reduction in losses from the CACP measures, these figures rise to about \$54 billion in additional U.S. output and about 348,000 in additional employment after three years. These estimates of the overall output and employment benefits to the U.S. economy from enactment of the CACP initiative are based on measures of the direct and indirect effects of piracy and counterfeiting on the U.S. economy from recent studies of the motion picture and recording industries.
4. Measured in present value terms, total federal tax revenues during the first three years of the CACP initiative would increase between \$1.4 billion and \$2.8 billion versus the present value costs over the same period of the CACP initiative of \$0.289 billion to \$0.489 billion. The estimates are based on the additional federal tax revenues that would result from the increases in US output and employment resulting from the enactment of the CACP measures.

C. Conclusions

Overall, our research indicates that the CACP initiative is a sound investment for the federal government. Even under very conservative assumptions, it would produce sizeable reductions in business losses caused by piracy and counterfeiting, it would generate meaningful increases in output and employment levels in the US economy, and it would increase federal government revenues by substantially more than its costs.

For every dollar spent prudently on the CACP initiative, federal tax revenues would increase by at least \$2.9 and by as much as \$9.7 with an intermediate range of \$4.9 to \$5.7.¹⁵ These federal tax revenue increases are due to the increase in U.S. output and

¹⁵ All dollar amounts are stated in present value (2007) terms and are average results over three years.

employment that would occur as a result of implementing the CACP initiative. For every dollar spent on the CACP initiative, U.S. output would increase by at least \$38 and would increase by as much as \$127 with an intermediate range of \$64 to \$75.¹⁶ The increase in output due to implementing the CACP program will result in the creation of between 174,000 and 348,000 new jobs during the third year. Therefore, the return to the federal government and the economy of investing in the CACP initiative is very high. In addition, state and local governments can expect to receive incremental revenues between \$1.25 billion and \$1.50 billion, in present value terms over three years, if the CACP initiative is implemented.

Over time, by enabling the IP-intensive industries to earn a higher return, the CACP measures would encourage more investment and foster faster U.S. economic growth. In addition to these quantifiable benefits, enactment of the CACP initiative would increase the protection of American consumers against the health and safety risks of counterfeited and pirated goods. Finally, more effective policies to combat piracy and counterfeiting are an important complement to policies to combat organized crime and terrorism and to enhance national security.

¹⁶ Id.